



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

May 18, 2015

Mr. John Study - # 129153
Wabash Valley Correctional Center
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 15-FC-136; Alleged Violation of the Access to Public Records Act by the Thorntown Police Department

Dear Mr. Study,

This advisory opinion is in response to your formal complaint alleging the Thorntown Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Department has responded to your complaint via Mr. Frank Clark, Chief Deputy. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 15, 2015.

BACKGROUND

Your complaint dated April 8, 2015 alleges the Department violated the Access to Public Records Act by failing to respond to your public record request.

On February 26, 2015, you submitted a public records request to the Department for a dash cam related to a specific incident. To date, you have not received a response. The Department responded to your complaint by stating the footage you have requested no longer exists.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Thorntown Police Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Department's disclosable public records during regular business



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Because the Department did not timely acknowledge your complaint, it is in technical violation of the APRA. Such a violation is moot, however, because the footage you seek does not appear to exist. Retention for general surveillance footage at the time of the video capture was thirty days (30) from the time it was created unless it was preserved for evidentiary reasons. A public agency is not required to produce a record which does not exist and has been taped over pursuant to a retention schedule.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Thornton Police Department has violated the Access to Public Records Act for not timely acknowledging your request.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", is written over a horizontal line.

Luke H. Britt
Public Access Counselor

Cc: Mr. Frank Clark, Chief Deputy